

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

HARVEY PATRICK SHORT,

Plaintiff,

v.

CIVIL ACTION NO. 2:14-cv-16506

LIEUTENANT BINION, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendants' Motion to Dismiss Defendant Commissioner Jim Rubenstein and Defendant Benita F. Murphy (the "Motion to Dismiss"), (ECF 30), Plaintiff's Motion for Leave to Amend the Initial Complaint (the "Motion to Amend"), (ECF 35), Plaintiff's Request for Entry of Default, (ECF 39), Plaintiff's Motion for Default Judgment, (ECF 41), and Plaintiff's Request for Entry of Default Judgment, (ECF 43). By Standing Order entered on May 7, 2014, and filed in this case on May 16, 2014, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and recommendations for disposition ("PF&R"). (ECF 4.) Magistrate Judge Tinsley filed a PF&R on May 6, 2015, recommending that the Court grant the Motion to Amend, but only as to the remaining Defendants, deny as moot the Motion to Dismiss, and deny Plaintiff's Request for Entry of Default, Plaintiff's Motion for Default Judgment, and Plaintiff's Request for Entry of Default Judgment. (ECF 64.)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to

which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Objections to the May 6, 2015 PF&R were due by May 26, 2015. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R, (ECF 64), and **GRANTS** the Motion to Amend, (ECF 35), but only as to the remaining two Defendants—Commissioner Jim Rubenstein and Benita F. Murphy.¹ The Court **ORDERS** that Plaintiff's proposed Amended Complaint (the "Amended Complaint"), (ECF 35-1), is now the operative complaint in this case as to those two remaining Defendants. The Court also **ORDERS** that Defendants Commissioner Jim Rubenstein and Benita F. Murphy shall file an Answer or other response to the Amended Complaint no later than fourteen days following the date of this Memorandum Opinion and Order.

The Court further **DENIES AS MOOT** the Motion to Dismiss, (ECF 30), and **DENIES** Plaintiff's Request for Entry of Default, (ECF 39), Plaintiff's Motion for Default Judgment, (ECF 41), and Plaintiff's Request for Entry of Default Judgment, (ECF 43).

IT IS SO ORDERED.

¹ By its Order, dated May 5, 2015, the Court ordered the dismissal with prejudice of Defendants Binion, Terry, and Osborne "subject to reopening on motion of any party, and for good cause shown, within 90 days." (ECF 62 at 1.) As such, the Court **DIRECTS** the Clerk to remove Defendants Binion, Terry, and Osborne from the caption for this case.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: June 9, 2015



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE